

Steven M. Chabre, SBN 173271
The Law Office of Steven M. Chabre
1335 Park Avenue
Alameda, CA 94501
(510) 749-1440
(510) 749-0466 (fax)
chabre66@yahoo.com

Attorney for Plaintiff,
CHA-SHAWN GROGANS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO / OAKLAND DIVISION

CHA-SHAWN GROGANS,

Plaintiff,

vs.

AETNA LIFE INSURANCE COMPANY and
BANK OF AMERICA LONG-TERM
DISABILITY INSURANCE PLAN,

Defendants.

Case No.:

**COMPLAINT FOR ERISA WELFARE
BENEFITS**

Plaintiff, Cha-Shawn Grogans, alleges:

1. JURISDICTION: Plaintiff's claims are filed pursuant to 29 U.S.C. § 1001, et seq. ("ERISA"). Jurisdiction and venue are therefore proper pursuant to 29 U.S.C. § 1132.

2. INTRADISTRICT ASSIGNMENT: A substantial part of the events which give rise to this claim occurred in Alameda County. Therefore assignment to the San Francisco/Oakland Division is appropriate under Civil L.R. 3-2(c)-(d).

3. Plaintiff brings this action pursuant to 29 U.S.C. § 1132(a)(1)(B) to clarify her rights to past and future disability insurance benefits under the terms of an ERISA welfare benefit plan.

1 Plaintiff seeks payment of ongoing disability insurance benefits and all back benefits that are due
2 to her, with interest.

3 **THE PARTIES**

4
5 4. Plaintiff is an adult resident of Alameda County.

6 5. Defendant Aetna Life Insurance Company ("Aetna") is a corporation, incorporated in
7 the state of Connecticut, and it is authorized to conduct business in the state of California.

8 6. Defendant Bank of America Long-term Disability Insurance Plan ("the Plan") is an
9 employee welfare benefit plan under the terms of ERISA, which was established by Bank of
10 America Corporation ("BAC"). BAC is a corporation, incorporated in the state of Delaware, and
11 it is authorized to conduct business in the state of California.
12

13 7. Plaintiff was an employee of BAC and is and was at all times relevant a participant
14 and beneficiary of the Plan.
15

16 **THE DISABILITY PLAN**

17 8. The Plan administrator is Bank of America Corporation Corporate Benefits
18 Committee.

19 9. The Plan promises to pay monthly disability insurance benefits to participants who are
20 disabled as defined by the Plan.
21

22 10. The Plan is insured by Aetna by means of a group insurance policy.

23 11. Claims are paid out of the assets of Aetna.

24 12. Aetna decides whether or not a claim made under the Plan will be allowed and paid.
25

26 **PLAINTIFF'S DISABILITY**

27 13. Plaintiff is a 60 year-old woman.

28 14. BAC employed plaintiff as a bank manager. Plaintiff worked for BAC from
October 1976 until October 2013 when she had to stop working due to breast cancer.

1 15. Plaintiff suffers from several medical conditions including chemotherapy induced
2 peripheral neuropathy, degenerative disc disease of the lumbar spine, major depression, and an
3 anxiety disorder.

4
5 16. Since October 24, 2013 plaintiff has been unable to perform her own occupation or
6 any other occupation due to her medical conditions.

7 17. Plaintiff's treating physicians have opined that plaintiff is unable to perform her own
8 occupation or any other occupation due to her medical conditions.

9
10 **CLAIM HISTORY**

11 18. Plaintiff applied for disability insurance benefits under the Plan by filing a claim with
12 Aetna.

13 19. Aetna approved the claim by letter dated April 24, 2014.

14 20. Aetna notified plaintiff that it was discontinuing her benefits as of October 24, 2015
15 in a letter dated October 8, 2015.

16 21. Plaintiff appealed the discontinuance, and by letter dated March 8, 2016 Aetna
17 partially reinstated plaintiff's LTD benefits, but only through March 7, 2016.

18 22. During the course of her claim for LTD benefits with Aetna, Aetna required that
19 plaintiff apply for Social Security disability insurance benefits and it hired a representative
20 named Allsup to handle her claim with Social Security.

21 23. During the course of the Social Security claim Social Security had plaintiff examined
22 by a psychologist, and on December 17, 2015 Allsup informed Aetna of the psychological exam.

23 24. Aetna made no attempt to obtain the psychological exam report, generated in the
24 Social Security claim.

25 25. The psychological report from the Social Security claim demonstrated that plaintiff is
26 disabled as defined under the Plan.

27 26. Social Security approved plaintiff's claim for disability benefits by letter dated April
28 24, 2016.

27 27. As plaintiff had been unrepresented during the administrative appeal of her claim

1 with Aetna, she, through her attorney, wrote Aetna on January 12, 2017 requesting that it reopen
2 her claim in part due to Aetna's failure to obtain the missing Social Security report.

3 28. Aetna wrote plaintiff's attorney a letter dated January 23, 2017 in which it refused to
4 reopen the claim.

5 29. Plaintiff exhausted her administrative remedies under the Plan.

6 **FIRST CAUSE OF ACTION**
7 **(Claim for Disability Insurance Benefits against All Defendants)**

8 30. Plaintiff realleges each of the paragraphs above as if fully set forth herein.

9 31. Plaintiff has performed all of her obligations with respect to the Plan and Aetna.

10 32. All conditions precedent to plaintiff's bringing this ERISA claim and to her
11 collecting disability insurance benefits under this ERISA plan and the underlying insurance
12 contract have been performed by plaintiff or have occurred.

13 33. Plaintiff has been disabled under the terms of the Plan and underlying insurance
14 contract at all times since October 24, 2013, and she has continued to be eligible to receive
15 disability insurance benefits under the Plan and underlying insurance contract since Aetna
16 discontinued those payments as of March 8, 2016.

17 34. 29 U.S.C. § 1132(a)(1)(B) states:

18 A civil action may be brought --

19 (1) by a participant or beneficiary --

20
21 (B) to recover benefits due to him under the terms of his plan, to enforce
22 his rights under the terms of the plan, or to clarify his rights to future
23 benefits under the terms of the plan.
24

25 35. Aetna and the Plan's actions constitute an unlawful denial of disability insurance
26 benefits under the Plan and underlying insurance contract as provided in 29 U.S.C. §
27 1132(a)(1)(B).
28

PRAYER FOR RELIEF

36. Plaintiff respectfully requests that this Court review the denial of her claim in this case and declare that she is entitled to ongoing disability insurance benefits under the Plan and underlying insurance contract; entitled to payment of back disability insurance benefits; and to interest on all back benefits.

37. Plaintiff seeks payment of all attorney's fees and costs associated with attempting to secure the benefits owed to her pursuant to 29 U.S.C. § 1132(g).

38. Finally, plaintiff seeks such other relief as this Court finds appropriate.

BY: /Steven M. Chabre/
STEVEN M. CHABRE
Attorney for Plaintiff

DATED: February 12, 2017